

¹ For counsel's information, lawyers in this judicial district most often comply with the LR's reference to "a concise summary" of the allegations in a complaint by simply copying the allegations of each complaint paragraph verbatim.

admitted or controverted by looking at a single document, rather than having to flip back and forth between a complaint and an answer.

Quite apart from that LR violation, a number of the paragraphs in the Answer are problematic in another respect. Count II Answer ¶21,² Count III Answer ¶24, Count IV Answer ¶27 and Count IV Answer ¶29 all read this way:

The Defendants deny the allegations of paragraph -- as certain allegations of this paragraph call for a legal conclusion and can neither be admitted or denied.

That locution is doubly flawed:

1. It is simply wrong to say that the statement of a legal conclusion in a complaint "can neither be admitted or denied" -- see App'x ¶2 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001).
2. It is of course oxymoronic to deny an allegation that "can neither be admitted or denied."

Finally, both affirmative defenses ("ADs") in the responsive pleading call for brief comment:

1. As to AD 1, defendants must flesh out the statute of limitations defense by identifying just which statute is assertedly applicable.
2. AD 2 must be stricken because, as any AD requires, the allegations of the FAC are taken as gospel -- see App'x ¶5 to State Farm, 199 F.R.D. at 279.

² Although counsel's current pleading reflects a disparity between the paragraph numbering in the FAC and in the Answer, that will automatically be eliminated when counsel complies with LR 10.1.

When defense counsel returns to the drawing board as he must, AD 1 may be reasserted in proper form, but AD 2 must be omitted.

Because the defects identified here cannot be cured by an amendment to the Answer, the entire answer is stricken, but leave is granted to file a self-contained Amended Answer on or before July 13, 2012. No charge is to be made to defendants by their counsel for the added work and expense incurred in correcting counsel's errors. Defendants' counsel are ordered to apprise their clients to that effect by letter, with a copy to be transmitted to this Court's chambers as an informational matter (not for filing).

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Milton I. Shadur
Senior United States District Judge

Date: June 29, 2012.